

EXHIBIT “A”

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

CAROLYN ENZOR, as Next)	
Friend of K.L.N.E. and)	
K.A.E. and JULIANNE)	CIVIL ACTION FILE
GLISSON, as Temporary)	
Administrator of the)	NO.: CV422-0836
Estate of Ka'La Enzor,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
THE KROGER CO.,)	
)	
Defendant.)	

VIDEOCONFERENCE DEPOSITION OF
KARIM H. VELLANI, CPP, CSC

10:02 a.m.

June 14, 2023

Sugar Land, Texas

Annette Pacheco, RPR, RMR, CCR-B-2153

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1 violence assessments, security risk assessments. I
2 mean, there's a myriad of things under the security
3 umbrella that I can handle.

4 Q. Okay. And thank you for that. Two
5 different things. You said there's vulnerability
6 assessments and then there's also threat assessments,
7 which combined allow you to perform a risk
8 assessment; is that correct?

9 A. Yes.

10 Q. What is the difference between the
11 vulnerability assessments versus the threat
12 assessments?

13 A. So a threat assessment is looking at what
14 has happened or what could happen. A vulnerability
15 assessment is looking at every opportunity regardless
16 of whether there is a threat associated with it.

17 And then a risk assessment is the better
18 approach, which is looking at, you know, the threats
19 and the vulnerabilities and what we're trying to
20 protect in conjunction. So looking at those
21 collectively is when you're really looking at your
22 risks.

23 And the best example I can give you is,
24 you know, I live outside Houston. Houston's, you
25 know, recognized as a pretty dangerous city. I

1 wouldn't sleep with my window open at night because
2 there's lots of threats. Not necessarily where I
3 live but in the area. Okay?

4 Q. Okay.

5 A. So I wouldn't sleep with my window open.
6 That would be a vulnerability. I have the
7 commensurate threat in the area.

8 But if I lived in Bozeman, Montana -- I
9 don't know if you've been to Bozeman. It's a lovely
10 place -- you know, I would keep my window open even
11 though the vulnerability exists. The threat's not
12 there, so the risk is not there.

13 Q. Okay. And I just read up a little bit on,
14 you know, some of your books and in other
15 publications. Would that be more considered -- what
16 you just described there when you combine the
17 vulnerability assessments for the threat assessments,
18 is that more of the totality of the circumstances
19 approach?

20 A. No. That's a legal term. I mean, that's
21 not -- you know, that's not -- that's -- there are
22 two -- we're operating two different worlds here.
23 You're talking about the legal concept and I'm
24 talking about the way things are done in the security
25 industry.

1 A security risk assessment takes into
2 consideration assets, what you're trying to protect,
3 threats, what you're protecting against, the existing
4 security measures that are in place to protect those
5 assets, and then the vulnerabilities that still
6 exist. That gives you your risk assessment.

7 So totality of the circumstances is, my
8 lay understanding, is a concept in law where you can
9 look at kind of all hazards as opposed to only
10 looking at prior similar crimes when trying to
11 evaluate foreseeability.

12 Q. Okay. So you just said the totality of
13 the circumstances, that terminology is just legal?

14 A. It's a term of art in your field. It's
15 not a term of art that we use in our field.

16 Q. Okay.

17 A. At least my understanding of totality of
18 the circumstances. I don't know what you're
19 referencing.

20 Q. Yeah. No. I'm just curious. I've read
21 about it in a number of these books. I believe one
22 of your co-authors or one that you wrote a chapter in
23 the book, Norman Bates, he's a proponent of the
24 totality of the circumstances method; is that right?

25 A. Well, Norm's an attorney. So I'm guessing

1 that Norm wrote about the legal concepts. That's why
2 I asked him to write a chapter in, you know, both
3 editions of *Strategic Security Management*.

4 Q. Right.

5 A. It's from a legal perspective.

6 Q. Yeah. And I think that's in Chapter 13
7 where Mr. Bates says: "The major problems with prior
8 similar crime rules is the lack of clear direction on
9 what constitutes similar." Do you agree with that?

10 A. Okay. So, I mean, I'm trying to make sure
11 you're understanding what I'm saying. Norm's an
12 attorney. So he's writing specifically on
13 foreseeability. He's not talking about security risk
14 assessments.

15 Q. Okay. It's just in your book. I mean, it
16 says he thinks the major problems of the prior
17 similar crime rule is the lack of clear direction on
18 what constitutes similar.

19 He says, "The legal effect of the prior
20 similar crime rule is to take black-and-white
21 position on the issue that either there was a risk of
22 certain type of crime or not. However, the risk of
23 crime is not black and white.

24 "The more contemporary approach to
25 analyzing foreseeability is the totality of the

1 circumstances rule. Under this rule, evidence is
2 typically allowed to show the existence of prior
3 dissimilar crime, crime in the neighborhood and other
4 factors to determine whether a crime is foreseeable.
5 By using the totality of the circumstances approach
6 to evaluate the level of risks, owners and managers
7 will be able to assess the risk of crime at their
8 properties than if they restricted their analysis to
9 only prior crimes."

10 You don't agree with that approach?

11 MS. O'HEARN: Objection to form.

12 A. Well, yeah. That's got nothing to do with
13 risk assessments. He's talking about this is what
14 the legal requirements are. And he's, obviously,
15 he's not talking about Georgia, which is even, you
16 know, tighter, I would say, based on my lay
17 perspective of the law in Georgia. So he's clearly
18 not talking about Georgia. He's talking about if
19 there are these two concepts, then this is the
20 differences between them.

21 None of it matters if we're talking about
22 Georgia law. And certainly none of it is addressing
23 security risk assessments.

24 Q. Right. And I think -- and I know that. I
25 agree. I know Georgia law on this. And me and

1 Ms. O'Hearn know exactly what the courts analyze when
2 they're looking to see if there was -- if a certain
3 crime was reasonably foreseeable. And it is, in
4 fact, as far as my understanding goes, looked at
5 prior similar crimes.

6 I'm just saying Mr. Bates says that a
7 better method is the totality of the circumstances.
8 And since you included it in your book, I just
9 wondered if you had any preference over the method
10 used. Not in the legal context. I'm talking
11 about --

12 A. Yeah.

13 Q. -- making a facility safe.

14 MS. O'HEARN: Object to the form before
15 you answer, but go ahead.

16 A. I think I understand your question. I
17 mean, No. 1, it's not my place to judge the law in a
18 particular state.

19 Q. (By Mr. Shipley) I agree with that.

20 A. No. 2, I would say that in the private
21 sector, what we engage in is called problem
22 identification. Okay? So we would look at the
23 specifics of what has occurred on the property to
24 identify whether we have reasonable security measures
25 in place to prevent further acts of a similar nature.

1 Okay?

2 And then we would also look at what does
3 the scientific literature say about the efficacy of
4 certain security measures.

5 So I'll give you an example. We'll just
6 cut to the chase here. The incident behind the
7 Goodwill or people getting in arguments about the
8 parking lot would not instruct me in any way, shape
9 or form to redesign the bathroom inside the Kroger
10 store.

11 Q. Okay. So we're getting into this. The
12 parking lot, you know, is owned by Kroger; correct?

13 MS. O'HEARN: Object to the form.

14 A. I'm sorry. Your question --

15 Q. (By Mr. Shipley) The majority of that
16 parking lot in the Berwick Shopping Center is owned
17 by Kroger?

18 A. I don't know --

19 MS. O'HEARN: Object to the form.

20 THE COURT REPORTER: I'm sorry. You're
21 talking over each other so I can't hear. I
22 didn't hear what you said, Mr. Vellani.

23 MR. SHIPLEY: Me?

24 THE COURT REPORTER: No. Mr. Vellani.

25 A. I don't know the ownership or operations

1 of the parking lot. That wasn't relevant in this
2 case.

3 Q. (By Mr. Shipley) So the only thing, and
4 we'll get into that later, but the only thing you're
5 looking at is any crime that's ever occurred within
6 the bathroom; is that right?

7 A. No. No.

8 Q. That's it. Just bathroom crimes?

9 A. No. You are putting words in my mouth.

10 Q. No. Is that what you're looking at?

11 A. Yeah. And now you're asking me a
12 question? The answer is no, that is not what I
13 looked at. I looked at the totality of where the
14 threats are occurring at the Kroger store and what
15 the nature of those threats were.

16 Q. Okay.

17 A. There was nothing -- what I'm saying is
18 there was nothing instructive in any of the crime
19 data or any of the internal reporting or any of the
20 security matrix that would inform me that there was a
21 problem in the bathroom.

22 Q. By looking at the totality of the crimes
23 that occurred there prior to Ms. Enzor's kidnapping,
24 rape and battery.

25 A. I'm sorry. Is that a question or a

1 in any way was a --

2 A. I'm sorry. The last part of your -- the
3 last part of what you said I didn't quite get.

4 Q. So the kidnapping that you reference
5 behind the Goodwill store, which is adjacent to
6 Kroger, you do not believe is similar to the crime
7 that Ms. Enzor suffered?

8 A. No. I wouldn't say it's not similar.
9 Okay? Categorically it would be somewhat similar.
10 Okay? And when I'm saying that, when I say
11 categorically, I'm talking about under FBI
12 definitions and UCR requirements, the crime of
13 kidnapping is actually one that is not collected. I
14 still look at it and put it under the category of an
15 aggravated assault and, therefore, under the category
16 of violent crimes.

17 So categorically it would be similar. But
18 the fact that there's stuff going on in the parking
19 lot, whether it's a road rage incident or customers
20 getting into a fight over a parking spot or a
21 kidnapping or attempted kidnapping behind the
22 Goodwill store, that does not inform me from a
23 problem identification perspective that there was a
24 problem on the -- in the bathroom inside the Kroger
25 store.

1 traveled at all to the state of Georgia for this
2 case?

3 A. Not for this case, no.

4 Q. So safe to say you've never been to the
5 Berwick Kroger in Savannah, Georgia?

6 A. Correct.

7 Q. Okay. And you've never laid eyes on the
8 bathroom as it existed, for the condition that
9 existed at the time of Ms. Enzor's incident?

10 A. No, sir.

11 Q. Okay. And you haven't seen the bathroom
12 since it's been altered in any way?

13 A. No, sir.

14 Q. Okay. Did you interview any other Kroger
15 employees other than Mr. Hughes?

16 A. No, sir.

17 Q. Okay. Did you attempt to interview the
18 manager, I believe it was a Mr. Edwards who was
19 managing the Kroger on April 27th of '21?

20 A. No. I didn't try to speak to Tim Edwards.

21 Q. Okay. Had you ever spoken to Tim Edwards
22 before?

23 A. No, sir.

24 Q. Okay. And we took some depositions last
25 week. Apparently Mr. Edwards left Kroger

1 that.

2 A. Yeah, I wouldn't doubt that. I mean,
3 that's -- that would be -- I mean, again, when you
4 develop policy, if the directive is to a certain
5 subset of the employee population, then there would
6 really be no reason for anybody else to receive it.

7 Q. Why wouldn't they want to get a copy of
8 that? You've written in your report on page 29 that
9 Kroger employees are the eyes and ears of the store.
10 What does that mean?

11 A. Well, I mean, at its most basic level, as
12 we would say it today, it's see something, say
13 something. It doesn't mean you need to take action
14 to do anything, but it's report it to a manager or
15 report it to loss prevention or asset protection.

16 I mean, you wouldn't want -- you wouldn't
17 want -- I mean, organizationally, you have divisions
18 of labor. So certain people are authorized to do
19 certain things. Other people are not authorized to
20 do those things.

21 Like, for example, when I work on a bigger
22 consulting project, and we've got several of them
23 going on right now, the consultants that are working
24 with me are not authorized to interface with the
25 client. That's my job. So I wouldn't give them

1 A. I'd rather push through as well. I'm with
2 you.

3 Q. Okay.

4 A. So sorry. Similarity.

5 Q. Yeah. Similarity. All right. So we can
6 agree that Chatham County police report documented
7 Ms. Enzor's incident as an abduction, rape and
8 battery; is that right?

9 A. Yes.

10 Q. All right. And it seems as if, according
11 to your report, you'd be looking for crimes that are
12 similar to these three type crimes that occurred
13 prior to Ms. Enzor's incident?

14 A. So at a base level, as I said earlier,
15 we're looking, you know, categorically as to what
16 kind of crime this is. Is it a violent crime? Is it
17 a property crime? Is it a disorder crime? So that's
18 the top-level analysis.

19 Categorically, those other three crimes
20 are similar. But once you dig down deeper into them
21 and the unique nature of this crime tells you that
22 it's different. But I would still count them, you
23 know, within the analysis of similar because
24 categorically they're the same.

25 Q. Okay. You just have another distinction

1 and that's the unique nature of a specific crime?

2 A. Correct. Because in order to solve a
3 crime problem, you have to understand the crime
4 problem. So, in other words, putting lighting up and
5 cameras up in the parking lot is not going to make a
6 hill of beans difference in this case.

7 Q. Okay. All right. So what type of
8 crimes -- if you were to make -- I think you
9 testified that you don't have any opinions on whether
10 or not this crime was reasonably foreseeable; is that
11 correct?

12 A. Correct.

13 Q. Okay. But you are interested in looking
14 at prior crimes. They are all throughout your
15 report; is that correct?

16 A. I'm interested in looking at prior crimes
17 to identify what the problem is and what Kroger
18 responded effectively to the problems that they were
19 experiencing. And there's nothing in their records
20 and there's nothing in the police records that tells
21 me that the bathroom was something that we should be
22 concerned about either from a quantitative
23 perspective or from a qualitative perspective.

24 Q. Okay. Would you be looking at things such
25 as armed robberies?

1 A. Again, just categorically, that would be a
2 violent crime, yes.

3 Q. Okay.

4 A. Because they have to be armed.

5 Q. Okay. Assaults?

6 A. Well, assaults are a different category.
7 Assaults are disorder crime. You can put them under
8 the category of what I might, you know, used to call
9 VI count, which is violent crimes or crimes against
10 persons.

11 So assaults are tricky because assaults
12 can be -- you know, you can be assaulted when you
13 receive a threat by Facebook. That would be an
14 assault even though there's no physical proximity.

15 So assaults are a tricky category because
16 assaults is a very broad crime. It covers a lot of
17 ground. It covers everything from, you know, me
18 coming and punching you on the shoulder to me sending
19 you a threat from, you know, Ukraine. Okay? Or
20 Russia or whatever. I don't want to single one of
21 those countries out, but you get my point.

22 If I send you an internet threat, that is
23 an assault. If I come and punch you on the arm
24 inside the Kroger, that would be an assault. So
25 assaults depending on their nature may be more

1 relevant.

2 Q. Okay. Along those lines -- and just to go
3 a little deeper into that, I think there's some
4 sections in your book or in your report you talk
5 about stranger crimes versus nonstranger crimes; is
6 that right?

7 A. Yes, sir.

8 Q. And you'd agree that stranger crimes, at
9 least according to your report, are easier to prevent
10 than nonstranger crimes; is that correct?

11 A. Yeah. If there's usually more opportunity
12 to do so. In other words, when you have domestic
13 violence, when you have domestic partners who are
14 authorized to be near each other, you know, there's
15 less opportunity to intervene.

16 And sometimes as, you know, you and I may
17 know, you know, the domestic partner may explode into
18 violence at times or, you know, things get a little
19 bit more heated; right? I don't know anything about
20 that.

21 Q. Me either.

22 A. Yeah. I mean, stranger crimes generally
23 are what security is trying to prevent. Domestic
24 crimes are nonstranger crimes, usually very difficult
25 to prevent. You sometimes can intervene.

1 In this situation, you know, we've got
2 obviously a private area in terms of a lady's
3 bathroom. I mean, you've got the quick intervention
4 by the Kroger personnel.

5 Q. Okay. Okay. Second thing, I think you
6 talked about other similarity in crimes. Next is the
7 frequency of the crimes; right?

8 A. Yes, sir.

9 Q. And it's measured by crime patterns,
10 trends and rates?

11 A. Yes, sir.

12 Q. Is that how you look at it?

13 A. Yes.

14 Q. Okay. One thing I had a question under
15 there is crime rates. It appears as if you've -- I
16 think you've given an analysis when you look at a
17 certain crime within a thousand people; is that
18 right?

19 A. Yeah. That's standard crime analysis
20 methodology, standard FBI methodology. When you hear
21 on the news, for example, that the crime rate in the
22 City of Savannah is going up or going down, what
23 they're referencing specifically is the crime rate in
24 the City of Savannah, which is calculated based on
25 two pieces of data: One, the population of the city

1 and, two, the violent crime level in the city. And
2 that's put in context.

3 Q. Okay. And your conclusion based on your
4 analysis is that this Berwick Kroger was suffering a
5 lower crime rate than Chatham County in general;
6 right?

7 A. Well, the point is that you're at less
8 risk at the Kroger than just generally in Chatham
9 County. I mean, obviously, there's a lot of crimes
10 that occur in public streets, you know, on parking
11 lots and whatnot.

12 So the point is that, you know, if you're
13 to do the crime rate comparison, which is more of a
14 barometer. Okay? Like, you know, I do worry about
15 properties when the crime rate is three times the
16 city's average. That's not a great look. Right?

17 In this situation, we've got a crime rate
18 at the store that is significantly lower than just
19 the city in general.

20 Q. Or the county in general?

21 A. Yeah. The county, yeah. Thank you.

22 Q. Yeah. Because you picked Chatham. But
23 isn't the fact that you picked Chatham to compare it
24 to, isn't that completely subjective in nature?
25 That's just your choice to use Chatham County.

1 A. It wasn't subjective in nature. It was
2 the fact that the police department somehow unified
3 with the county at some point. That wasn't a
4 decision I made. Normally I would look at the city.
5 But in this case you can't do that because my
6 understanding is it's one police department.

7 Q. Well, have you ever been to Chatham
8 County?

9 A. I have. I was there last year, I think.

10 Q. Okay. Were you here for work or . . .

11 A. Yes. I've been there for conferences.
12 I've been there for fun. I've been there to help
13 protect a friend in a situation. And I have been
14 there for an expert case.

15 Q. Okay. But not for this particular case;
16 correct?

17 A. I have been for that particular case, no.

18 Q. Do you know how many municipalities are
19 within Chatham County?

20 A. No. I think, and I could be wrong on
21 this, but I thought that this particular police
22 department joined together with Chatham County or
23 that this Kroger store was within Chatham County.

24 Q. It is within Chatham County. I certainly
25 would agree with that. Now --

1 A. It's not within the city limits of
2 Savannah or something; right? I mean, isn't that --

3 Q. That's right. That's right. It's within
4 Chatham County but not within the city limits. But,
5 you know, I represent there is at least seven
6 municipalities within Chatham County.

7 And I guess my question to you is wouldn't
8 it be more reliable to say, for instance, pick the
9 ZIP Code that this Kroger, Berwick Kroger was located
10 in when you're trying to make a comparison as you
11 have?

12 A. No, because you don't know what the
13 population is of the ZIP Code.

14 Q. You can't figure that out?

15 A. I don't know any accurate way to do that.
16 I mean, that's not something that's published, to my
17 knowledge. You could do it -- so here's the problem.
18 Your question is totally legitimate. Okay?

19 The problem -- you would -- ideally you
20 would want to do it for a police beat because we've
21 got the crime stats for the police beat, and -- but
22 we don't have the population for a police beat.
23 We've got the population of a census track, but we
24 don't have the population of a census track.

25 We've got, you know, we could possibly

1 get -- I don't know if you can get the crime data for
2 the ZIP Code or not, but we don't have the
3 population. Or maybe you can, I don't know, for a
4 ZIP Code.

5 The only -- the only place where you --
6 the next level where you have both the population and
7 the crime numbers is the city.

8 Now, I wish that we did, you know,
9 populations for police beats but we don't. I wish we
10 had crime data for census tracts, but we don't. You
11 know, ZIP Codes has always been kind of wonky because
12 if you think about what a ZIP Code is, that's neither
13 -- that's not -- a ZIP Code is not created for
14 purposes of population or crime data. The ZIP Code's
15 purpose is for distribution of mail. So the ZIP
16 Code's not a great measure anyway.

17 I always laugh when I see those in the
18 newspaper, top 10 worst ZIP Codes in the city of
19 Houston. I mean, I don't even know why that makes
20 any sense to anyone, you know.

21 Q. Right.

22 A. It's an arbitrary thing that's created --
23 I don't know if it's arbitrary. It's something that
24 was created specifically for the mail service.

25 Q. Yeah, I know. But what I'm saying -- and

1 I'm using ZIP Codes by example. But doesn't it give
2 you a more narrow -- not just a narrow, but a more
3 reliable look on the area that is surrounding this
4 Kroger?

5 Like, for instance, by your analysis, you
6 are factoring in, well, one of the municipalities,
7 Port Wentworth, the City of Savannah, which all have
8 crime that is astronomical, which may be completely
9 different to other areas or where the Kroger is.
10 It's just don't you need to look at more of the
11 immediate surrounding area when you're coming up with
12 that stat? Don't we need to be more reliable?

13 A. Yes. Your question's really a good one.
14 Okay. It really is a good one.

15 Q. Finally.

16 A. The problem is there's an absence of data
17 that would allow you to do what you're suggesting.
18 It's a good idea --

19 Q. Yeah.

20 A. -- but there is no way to physically do
21 it.

22 Q. Okay. I understand. Thank you. And I
23 did notice in there that you -- I think this is based
24 on this information that was out there. You based it
25 just on 2018; right?

1 A. Yes.

2 Q. Okay. '19, '20, '21 weren't available?

3 A. Yeah. There was a reason for that. I
4 think I footnoted it, if I'm not mistaken. I'm
5 trying to getting back to my report. I've got 50
6 tabs open here now with -- hang on a second. I've
7 still got the LP manual open and the risk assessment
8 methodology and Mr. Benson's report and my contract.

9 So there was a reason why I did. Yeah,
10 only 2018 was available. So 2019 to '21 wasn't
11 available from the FBI. So --

12 Q. Okay. I just wanted to make sure.

13 A. -- that's embarrassing, but, you know,
14 that's the only thing I could do.

15 Q. Okay. I gotcha. Moving on, recency.
16 Let's see. And I guess I'm more -- I guess that goes
17 to what we just talked about. We're looking at 2018.
18 We're not looking at '19 and '20. I mean --

19 A. No, no, no. That's -- no, no. As far as
20 Chatham County --

21 Q. Yes.

22 A. -- we're not looking at it because it
23 doesn't exist. But, no, I certainly looked at the
24 crime data for, you know, for the entire time period
25 that was relevant here up to April 27, 2021.

1 Q. For the Kroger Berwick; right?

2 A. For the Kroger, yeah.

3 Q. Okay.

4 A. I can't do anything with stats if it don't
5 exist for the county.

6 Q. Gotcha. Okay. I thank you for that
7 distinction.

8 And I believe in your report you talk
9 about when assessing the actual threats, the
10 following may be considered relevant crimes for a
11 three-to-five-year period. You chose three. Why did
12 you choose three instead of five?

13 A. So I always do that in every case. I look
14 at three calendar years and up until the date of the
15 incident in the subject year. So that is a
16 standardized methodology that is consistent with the
17 IAPSC methodology. And I use that same methodology
18 with my crime analysis clients. I use the same
19 methodology when I'm doing consulting projects, and I
20 do the same methodology in every case.

21 It makes every Texas attorney mad at me
22 because there's case law in Texas you only got to
23 look at two years. Here comes their expert going,
24 no, I'm looking at three years, you know.

25 Q. Okay.

1 A. I use a standardized methodology across
2 the country.

3 Q. Okay. But it would not be wrong to look
4 at a five year as well?

5 A. It wouldn't be, but you've got to apply a
6 recency test; right? I mean, you can look at five
7 years back and see that the, you know, in some
8 cases -- I had a case a couple years ago where if you
9 look five years back, the property was one of those
10 that I told you was -- in that case it was six times
11 the city's violent crime rate. But in the three
12 years prior to the incident, you know, the crime rate
13 was zero. It was amazing. The property manager was
14 just absolutely amazing on that case, on solving the
15 problem and then obviously on the case.

16 So the further back in time you go, the
17 more nuanced the data's going to get. The more --
18 the less helpful it's going to get. It can sometimes
19 tell a nice story like in that case.

20 Q. Uh-huh.

21 A. But, you know, generally back, generally
22 the further back in time, you're going to give it
23 less weight anyway.

24 When I develop methodologies like the
25 security matrix for clients, you know, I'm weighting

1 crimes that are more recent heavier than I am crimes
2 that are further back in time. And that's arbitrary.

3 You can go, you know, every crime in the
4 last year is worth three points. Every crime two
5 years ago is worth two points. Every time three
6 years ago is worth one point. I mean, it's
7 arbitrary, but the point is you want to apply a
8 recency test.

9 But, yes, can you go back five years?
10 Yes.

11 Q. Okay. Moving on, proximity. That, I
12 believe, is the fourth factor that we're looking at
13 under, I think what you had deemed it was a
14 quantitative analysis?

15 A. Yes, sir.

16 Q. Yeah. It's right after that you say look
17 at violent -- or look at relevant crimes at the
18 subject property for three-to-five-year period prior
19 to the incident and in the immediate vicinity of the
20 subject property for a three-to-five-year period.

21 I wanted to ask, obviously, subject
22 property. Are you talking about just the Kroger
23 store itself?

24 A. So when I pulled the crime data, it was
25 for all the addresses associated with the shopping

1 center. So I think they all share one address, if
2 I'm not mistaken, and then they have Suite A, B, C,
3 or whatever, you know, Unit A, B, C, or whatever it
4 is. So let me -- let me -- and I'll just throw out
5 all the answers here so then hopefully it'll help
6 understand.

7 Q. Yeah.

8 A. No. 1, in Georgia, my understanding of the
9 law is you only look at what's on the property and
10 what was known to the property owner. Okay. So
11 Georgia's got a very tight law as far as my lay
12 understanding of it.

13 No. 2, criminology has shown that crime in
14 the area, you know, unless it can be shown that it's
15 impacting the subject property is not relevant. And
16 that's been proven over and over and over again
17 through lots of studies, which I provided you in that
18 reference document.

19 Third, when I pulled the data, it was for
20 the shopping center. It was not just the Kroger.
21 That's why I'm aware of those other crimes.

22 So there's a lot of polls for service here
23 and I think even in the crime section, there's stuff
24 that didn't occur at the Kroger.

25 Q. Okay. What about -- how do you find

1 immediate vicinity when we're talking about that?

2 A. That's a great question. I don't have an
3 answer for that because there is no definition of
4 that. You know, like this term proximity comes out
5 of Texas law. And I asked an attorney to pull all
6 the security cases that reference proximity. And he
7 gave me a 3,000-page PDF, which I ain't reading. I
8 mean, and I don't really care what Texas law says. I
9 got to do it the way I say I got to do it.

10 So what I would say is that usually it's
11 the approaches to the property. Now, in the case of
12 a parking lot, they're all sharing a parking lot. So
13 it would be the parking lot, it would be the entire
14 shopping center and the approaches to it.

15 By definition, in criminology, the place
16 would be the Kroger because, you know, it meets -- if
17 you go back up to my definition of place, and I say
18 "my definition," the definition of place that I gave
19 you in the report, it's very small. It has one
20 address, one land parcel, one building. It has a
21 known geographic location. It is contained within
22 defined boundaries, and it serves one general
23 function.

24 That makes Kroger the place and the
25 shopping center the immediate vicinity by the way I

1 A. I don't specifically recall this one, but
2 I'm sure I looked at all of them.

3 Q. Okay. It says that --

4 A. So I would have looked at it.

5 Q. Yeah. She -- left knee and some bruised
6 chin, hurt on top of head. Would you deem this
7 substantially similar to Ms. Enzor's incident?

8 A. Again, categorically, yes, it would be an
9 assault. It was of a -- you know, it was an assault.
10 It was in the store. So I would count that for sure.

11 Q. Okay. Let's see.

12 A. But, again, remember what I said earlier.
13 That at the end of the day, we need to be doing
14 problem identification. In neither of these --
15 neither any of these three were instructive of a
16 bathroom issue.

17 Q. Okay. And I understand that that's your
18 testimony there, and I certainly will note that, you
19 know, certain things can be noted in the deposition.
20 Let's see here.

21 This is an incident, aggravated assault,
22 hit-and-run. It occurred on May 4th, '20. This is
23 the one -- I don't know if you had a chance to
24 review -- this is where a woman related to the police
25 officers that a man or someone tried to -- a woman

1 tried to slash her on the throat.

2 A. Yes.

3 Q. Have you seen that?

4 A. Yeah. This was a road rage incident.
5 That was one of the ones I was alluding to. This
6 one's also documented, you know, in the Kroger
7 reports.

8 Q. Would it be substantially similar to the
9 crime Ms. Enzor suffered?

10 A. Again, categorically, yes, it's an
11 aggravated assault.

12 Q. Okay. With your caveat about the
13 bathroom, not occurring in the bathroom?

14 A. Again, the question is does the data
15 identify a consistent problem that would inform us as
16 to a problem and possibly solutions in the bathroom.
17 And none of these -- none of these incidents that we
18 talked about thus far, and none of the ones that I've
19 looked at were indicative of a bathroom problem or
20 potential solution.

21 Q. Okay. This is one I know we discussed
22 early on, May 8th of 2020. This is the incident that
23 happened behind the Goodwill store, which is adjacent
24 to the Kroger store where a woman had told police
25 that three black males were shoving another black

1 male into a dark-colored Range Rover.

2 Do you believe that this incident would be
3 substantially similar to Ms. Enzor's?

4 A. So I think internally, I consider
5 kidnapping and kidnapping attempt to be an aggravated
6 assault even though technically it's not, according
7 to the FBI definition.

8 So, again, noninformative for the
9 bathroom, certainly. Don't know the exact nature of
10 it other than what's contained in the report, you
11 know. There's insufficient details for us to make
12 any real judgments on this particular one.

13 Categorically, it is not similar other
14 than the kidnapping element that the police brought
15 up in Ms. Enzor's situation. But categorically it's
16 not a violent crime. But I, like I said, internally
17 in my mind, I keep that, you know, kidnapping within
18 the confines of an aggravated assault. So I'm not --
19 I would not exclude this one. Let's put it that way.

20 Q. Okay. A couple more here. This one does
21 not have, I believe, a date, but I think that you can
22 look at the case number on there, and I believe that
23 this would be August 13th of 2020 based on how they
24 code these. Suspicious incident where a man claimed
25 that he was robbed at gunpoint at DeMarco's Pizza,